

U.S. – Korea Free Trade Agreement Implementation Instructions
March 12, 2012

Background

The U.S.-Korea Free Trade Agreement Implementation Act (“the Act”, Pub. L. No. 112-41, 125 Stat. 428 (codified at 19 U.S.C. 3805 note (2012))), was signed into law on October 21, 2011. The Act allowed for the Agreement to take effect on or after January 1, 2012, with the actual implementation date to be determined by the President. Section 201 of the Act authorizes the President to proclaim the tariff modifications and provide the rules of origin for preferential tariff treatment with respect to goods provided for in the Agreement. The text of the Agreement is posted on the [U.S. Trade Representative’s](#) website.

Presidential Proclamation 8783, dated March 6, 2012 and published in the *Federal Register* on March 9, 2012, implements the U.S.-Korea Free Trade Agreement (UKFTA) for goods entered, or withdrawn from warehouse for consumption, on or after March 15, 2012. The Proclamation incorporated, by reference, Publication 4308 of the United States International Trade Commission (USITC). Annex I of Publication 4308 amends the Harmonized Tariff Schedule of the United States (HTSUS) by adding a new General Note 33 (GN 33) containing specific information regarding the UKFTA and a new Subchapter XX to Chapter 99 to provide for temporary tariff rate quotas (TRQs) implemented by the UKFTA. In addition, new provisions have been added to Subchapter XXII to Chapter 98. Annex II of Publication 4308 amends the HTSUS to provide for immediate and staged tariff reductions. Publication 4308 has been posted to the [USITC](#) website.

The Agreement provides for the immediate or staged elimination of duties and barriers to bilateral trade in goods and services originating in the United States and/or Korea.

This document provides guidance with respect to preferential tariff claims under the UKFTA.

Title 19, Code of Federal Regulations (CFR), is being amended to implement the Agreement and the Act.

Origination

An originating good is one that meets the general and/or product specific rules of origin set forth in GN 33 and all other requirements of the agreement.

Rules of Origin

Section 202 of the UKFTA Implementation Act specifies the rules of origin used to determine if a good qualifies for preferential tariff treatment or “originates” under the Agreement. The HTSUS has been amended to include GN 33, both the general and specific rules of origin, definitions, and other related provisions.

In general terms, under the UKFTA a good is originating when:

- a) The good is wholly obtained or produced entirely in the territory of the Parties (Republic of Korea, the United States or both);
- b) The good is produced entirely in the territory of one or more of the Parties and
 - (i) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in GN 33(o); or
 - (ii) The good otherwise satisfies any applicable regional value content (RVC) requirements specified in GN 33(b); and
 the good satisfies all other applicable requirements; or
- c) The good is produced entirely in the territory of one or more of the Parties exclusively from originating materials.

Transit and Transshipment

Goods that undergo further production outside the territory of the Republic of Korea or the United States, other than unloading, reloading or other processes to preserve the condition of the good or to transport the good to the territory of Korea or the United States, or goods that do not stay under customs control in the territory of a non-Party, will not be considered originating.

Regional Value Content (RVC) Calculation Methods

For most goods that are subject to an RVC requirement, the Agreement provides for two calculation methods: (1) the build-up method based on the value of originating materials; and (2) the build-down method, based on the value of non-originating materials. For certain automotive goods, the net cost method, based on the production costs, may also be used.

Build-Up Method

Unlike our other FTAs that use the build-up method, under UKFTA build-up, an indirect material is disregarded rather than being included as part of the “value of originating materials” (VOM). This is an important distinction when applying the build-up method, as it will have a direct effect on the whether a good meets the required threshold.

Net Cost Method for Automotive Goods

For the automotive goods indicated below, the net cost method, based on all production costs less those of the non-originating materials, may be used.

<u>HTSUS</u>	<u>General Description</u>
8407.31 through 8407.34	Engines
8408.20	Diesel Engines for Vehicles
8409	Parts of Engines
8701 through 8708	Motor Vehicles, Chassis, Bodies and Parts

De Minimis (Non-Textiles)

The UKFTA has a 10 percent de minimis provision for most goods, with exceptions for textiles in GN 33(d) and other goods enumerated in GN 33(e)(ii). Under the non-textile de minimis rule, a good containing a non-originating material that does not undergo the tariff classification change specified in GN 33(o) may still originate if the value of all such non-originating materials does not exceed 10 percent of the adjusted value of the good. When performing an RVC computation, the value of de minimis materials is included in the total value of the non-originating materials.

Textiles and Apparel

Textiles and apparel products may qualify as originating under the UKFTA if they meet the requirements as specified in the Agreement.

Below is a summary of the types of processes required for some of the more basic textile products in order for them to be considered eligible for preferential tariff treatment under the UKFTA. There are exceptions even to these requirements, depending on the product being imported. For more specific information refer to Annex I of the Modification to the HTS to implement the UKFTA, USITC Publication 8783 or GN 33 to the HTS. It should be noted that for apparel in Chapters 61 & 62 and made-up textile articles in Chapter 63 only the component that determines classification must meet the tariff shift rules.

- a) Yarn – generally, fiber must originate in Korea or the United States to qualify for preferential tariff treatment.
- b) Fabric – generally, yarn must originate in Korea or the United States in order for the fabric to qualify for preferential tariff treatment. For example, cotton and man-made knit fabric are under fiber forward rules, meaning the fiber must originate in Korea or the United States for the fabric to qualify for preferential treatment.
- c) Apparel – generally, yarn must originate in Korea or the United States for the apparel to qualify for preferential tariff treatment.

De Minimis (Textiles)

A textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex I or GN 33(o), shall nonetheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component (see GN 33(d)(iv)(A)).

Elastomeric Yarns

Regardless of the de minimis allowance above, a good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed and finished in the territory of a Party (see GN 33(d)(iv)).

Visible Linings

Fabric used for visible linings in certain apparel, such as suits, coats and skirts, must be wholly formed and finished in a UKFTA beneficiary country (see GN 33(o), Chapter 61 and 62).

Short Supply

Fibers, yarns or fabrics determined to be unavailable in commercial quantities in a timely manner among the Parties, will be listed in Subchapter XX of Chapter 99 and goods made from such inputs will be subject to quantitative restraints. However, at the time of implementation, there are no products on the UKFTA short supply list.

Quota

For UKFTA agricultural products subject to quantitative limits, the required 98 or 99 HTS number must precede the appropriate chapter 1-97 HTS number and be identified on the CBP Form 7501. The UKFTA agricultural quotas are covered by HTS numbers 9822.07.10 through 9922.07.25

The application of tariff rate quotas for the UKFTA is addressed in separate instructions in the form of a quota book transmittal (QBTs) issued by the Headquarters Quota Branch. These instructions include the quota period, procedures for quota openings, restraint limits, and any special processing instructions. The instructions are available on the CBP website, www.cbp.gov, under the “Textiles and Quotas” section of the “Trade/Trade Programs” page. In addition to QBTs, there is also a link to the Commodity Status Report. This weekly report lists the fill rates for the tariff rate quotas. The past four reports are maintained on the site.

Treatment of Sets

Notwithstanding the rules of origin set forth in GN 33(o), goods classified under General Rule of Interpretation (GRI) 3 of the HTSUS as goods put up in sets for retail sale shall not be regarded as originating goods unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed 10 percent of the adjusted value of the set

per GN 33(d)(ii) for textile or apparel goods or 15 percent of the adjusted value of the good per GN 33(n)(iv) for non-textile goods.

Eligible Articles (Non-Textile and Textile) / Immediate and Staged Reductions

The list of HTSUS item numbers that are eligible for immediate duty free treatment, as well as those subject to staged tariff rate reductions, can be found in Annex II of USITC Publication 8783. Dutiable tariff items eligible for a UKFTA claim indicate “KR” in the Special column of the HTSUS. UKFTA preference may also be claimed on unconditionally free tariff items, although “KR” will not be listed.

Merchandise Processing Fees (MPF) Exemption

The UKFTA provides that originating goods are exempt from MPF. Unconditionally free goods with a UKFTA claim are subject to the same certification and verification requirements as dutiable goods.

Correction of a False/Unsupported UKFTA Claim

An importer who has made a false or unsupported preference claim must submit a correction within 30 days of discovery and pay all duties and merchandise processing fees (MPF). Penalties will not be assessed when the importer promptly and voluntarily makes a corrected claim and pays any duties owing.

Certification and Other Information Requirements

The importer may make a claim for preferential tariff treatment based on a written or electronic certification issued by the exporter or producer, or based on the importer’s knowledge, including a reasonable reliance on information in his possession. The importer must submit, upon request by CBP, the certification and other information substantiating the preference claim. The importer is responsible for providing the substantiating documentation to CBP upon request, including that information provided to CBP directly by the exporter or producer.

The certification need not be in a prescribed format, may be submitted electronically, and may cover a single importation or multiple importations of identical goods within a maximum 12-month period. The certification must include the data elements specified in Attachment A. The certification may be submitted in English or Korean. If submitted in Korean, CBP may request an English translation.

An importer may submit his own certification or that of the exporter or producer. Irrespective of the source of the information submitted to CBP, the importer is responsible for exercising reasonable care and the accuracy of all documentation submitted to CBP.

CBP will not request a certification or other information on importations valued at \$2,500 or less, unless there is reason to believe the importation is part of a series of importations to evade compliance or violates other U.S. laws or regulations.

Importers are required to maintain all certifications in their possession and all records related to the importation for five years from the date of importation.

Origination Analysis and Certification when no Tariff Change Rule Exists

Manufacturers, exporters and importers are advised that the UKFTA tariff change rules (TCRs) were negotiated using the 2002 Harmonized Tariff Schedule (HTS). Goods assigned new classification numbers in 2007 and 2012, to correspond to World Customs Organization approved modifications, will not find corresponding TCRs in GN 33(o).

- Until revised TCRs are published, manufactures of affected goods should classify both the good and its materials in accordance with the 2002 HTSUS when performing the TCR analysis.
- Until revised TCRs are published, the certification should indicate both the current HTSUS number and the corresponding 2002 HTSUS number used to perform the TCR analysis.

Verification by CBP

Under the UKFTA, the importer is responsible for substantiating the validity of a preference claim. This preference claim may be based on a certification, other documentation, or the importer's knowledge. CBP will initiate a verification via a CBP Form 28, Request for Information, to the importer.

Upon request, the importer shall provide the certification (Attachment A) and documentation supporting the certification. Importers should be prepared to substantiate the originating status of the goods with documentation such as, but not limited to, the following:

- Flow charts, technical specifications and other documents explaining the manufacturing process;
- An explanation of how the good meets the GN 33(b) rule of origin or the GN 33(o) specific rule of origin;
- A bill of materials showing the classification number, origin, and cost (if the good is subject to a RVC calculation) of each material;
- A certification of origin or affidavit corresponding to each originating material that fails the prescribed tariff shift; otherwise, the material may be deemed non-originating;
- Purchase orders and proof of payment to substantiate values;
- Documentation pertaining to assists, inventory management methods, indirect materials, etc.; or
- Other documentation, as needed.

The importer is responsible for ensuring that adequate substantiating documentation is provided to CBP upon request.

The producer may elect to provide this documentation directly to CBP to protect its confidentiality. Subsequent to the initial contact with the importer, CBP may, at its discretion, communicate directly with the exporter or producer.

CBP may verify the originating status of a good by means of a verification visit to the exporter or producer in accordance with procedures established by the Parties.

Issuing a Determination

If the importer provides CBP with sufficient information to demonstrate that the goods originate, CBP will notify the importer of the positive determination via a CBP Form 29, Notice of Action, Taken. The CBP Form 29 will include the HTSUS number, description of the good, and the rule of origin, as well as the legal authority/regulation.

If the importer fails to adequately substantiate the claim, CBP will issue a negative determination via a CBP Form 29, Proposed. The notice shall state why the documentation was insufficient or the good otherwise does not originate and allow an additional 20 days for the submission of documentation prior to the issuance of a CBP Form 29, Taken, rate advancing the good.

Impact of a Negative Determination on a Blanket Certification

A negative determination on a good on a blanket certification of origin may result in the denial of preference on all identical goods covered by that blanket.

Repeated False or Unsupported Claims (Pattern of Conduct)

Where verification or other information reveals a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the UKFTA rules of origin set forth in General Note 33, CBP may suspend preferential treatment under the UKFTA to entries of identical goods covered by subsequent statements, declarations, or certifications by that importer, exporter, or producer until CBP determines that representations of that person are in conformity with General Note 33.

Protest Rights

Importers or other interested parties may file a protest to contest a negative origin determination pursuant to 19 U.S.C 1514 within 180 days of liquidation. If approved, the protest will provide the importer with a refund of duties and/or MPF.

Entry into Force

Importers may claim UKFTA preference on originating goods entered or withdrawn from warehouse on or after March 15, 2012.

Making a Preference Claim

A claim for preferential tariff treatment may be made at the time of entry summary by prefacing the HTSUS number of the applicable good on CBP Form 7501 with the Special Program Indicator (SPI) "KR".

Claims Prior to the Completion of Programming

Prior to the completion of programming, importers may make a UKFTA claim as follows:

- Transmit the CBP Form 3461 (entry) via ABI and file a non-ABI CBP Form 7501 (entry summary) making the preference claim; or

- File a non-ABI CBP Form 3461 (entry) and a non-ABI CBP Form 7501 (entry summary) making the preference claim.

Claims Subsequent to the Completion of Programming

Subsequent to the completion of programming, importers may make a UKFTA claim at entry summary through the Automated Commercial System (ACS) or Automated Commercial Environment (ACE), or within one year of importation as indicated in the “Post-Importation Claims” section, below.

Post-Importation Claims

The importer may make a post-importation claim, in accordance with 19 USC 1520(d), for preferential treatment under the UKFTA, within one year of importation. The importer shall submit a claim in writing to the port of entry, to include:

- 1) A written declaration stating that the good qualified as an originating good at the time of importation and the number and date of the entry or entries covering the good;
- 2) A copy of a certification containing the required data elements (Attachment A) demonstrating that the good originated at importation;
- 3) A statement indicating whether the entry summary or equivalent documentation was provided to any other person;
- 4) A statement indicating whether a protest, petition or request for reliquidation has been filed relating to the good and identification of such filing(s).

If CBP finds that the certification is illegible or defective, or that the post-importation claim otherwise does not comply with the requirements, the post-importation claim will be rejected with a statement specifying the deficiencies. CBP will process the resubmission of a post-importation claim as long as all deficiencies have been addressed prior to the expiration of the one-year-from-importation period.

CBP reserves the right to verify the originating status of the goods and to deny preference where the claim was inadequately substantiated or the goods otherwise failed to meet the terms of the UKFTA.